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# NATIONAL ASSOCIATION OF THE DEAF

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January 31, 1997

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF DEAF RELATIONS

Mr. William F. Caton  
Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

Re: In the Matter of Implementation of the Telecommunications  
Act of 1996, Amendment of Rules Governing Procedures to Be  
Followed When Formal Complaints are Filed Against Common  
Carriers, CC Dkt. No. 96-238.

Dear Mr. Caton:

Enclosed please find an original and six copies of the Reply of the National Association of the Deaf in the in the above captioned proceeding.

I would appreciate your referring all correspondence regarding this matter to my attention.

Sincerely,

Karen Peltz Strauss  
Legal Counsel for Telecommunications Policy

cc: Common Carrier Bureau, Enforcement Division  
International Transcription Services, Inc.

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**ORIGINAL**

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

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OFFICE OF SECRETARY

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Procedures to Be Followed When )  
Formal Complaints are Filed )  
Against Common Carriers )

WT Docket No. 96-238

**REPLY COMMENTS OF  
THE NATIONAL ASSOCIATION OF THE DEAF**

Karen Peltz Strauss  
Legal Counsel for Telecommunications Policy  
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**REPLY COMMENTS OF**

**THE NATIONAL ASSOCIATION OF THE DEAF**

The National Association of the Deaf ("NAD") hereby submits these reply comments to the Federal Communication Commission's ("FCC's" or "Commission's") Notice of Proposed Rulemaking (NPRM) in the above captioned proceeding.

The NAD is the nation's largest organization safeguarding the accessibility and civil rights of 28 million deaf and hard of hearing Americans in education, employment, health care, and telecommunications. The NAD is a private, non-profit federation of 51 state association affiliates including the District of Columbia, organizational affiliates, and direct members. The NAD seeks to assure a comprehensive, coordinated system of services that is accessible to Americans who are deaf and hard of hearing, enabling them to achieve their maximum potential through increased independence, productivity, and integration.

I. The FCC Should Employ the Same Complaint Procedures for all Covered Entities under Section 255

The Telecommunications Act of 1996 created Section 255 of the Communications Act, which requires manufacturers and service providers to make their telecommunications equipment and services accessible to individuals with disabilities. This section covers not only common carriers, but equipment manufacturers and other service providers that provide telecommunications services to the public. In a separate proceeding, the Commission has requested comment on the complaint procedures to be used for enforcing Section 255. In the Matter of Implementation of Section 255 of the Telecommunications Act of 1996, Access to Telecommunications Services, Telecommunications Equipment, and Customer Premises Equipment by Persons with Disabilities, Notice of Inquiry, WT Dkt. No. 96-198 (Sept. 19, 1996) at ¶¶37,38 (“NOI”). With a goal towards consistency, we urge that the Commission develop processes for filing formal complaints against common carriers which are identical to the processes to be followed with respect to filing formal complaints against other entities covered by Section 255. To create separate and distinct processes only for common carriers would create considerable confusion and added burdens for individuals seeking redress under Section 255.

II. The FCC Should Develop a New Procedure for Formal Complaints under Section 255.

In response to its NOI on Section 255, the NAD and others requested the Commission to create an alternative procedure for filing formal complaints on accessibility

matters, which would exclude the present filing fees for complaints brought against common carriers under Section 208. See 47 C.F.R. §1.1105-1.c; Comments of the NAD, Comments of United Cerebral Palsy Associations. We renew that request at this time, and point the Commission to the fact that such fees have been waived for the filing of formal complaints under Section 225 of the Communications Act, covering telecommunications relay services. 47 C.F.R. §64.604(c)(5). Eliminating such fee requirements gives recognition to the very limited resources of individuals with disabilities. At the same time, eliminating such fees is unlikely to spur the filing of frivolous complaints, as is shown by the mere handful of formal complaints that have been filed under Section 225 since its effective date of implementation, July 26, 1993.

### III. The Commission Should Accept Complaints Based Solely on Information and Belief

The Commission requests comment on whether it should prohibit complaints that allow factual assertions which are based on “information and belief.” ¶38. On this point, we agree with other commenters that such complaints should be accepted for FCC review, because some individuals and organizations may only have information and belief with respect to grievances against large telecommunications entities. See Comments of Bechtel & Cole, Chartered at 2 (“Bechtel”).

Recently, the Telecommunications Access Advisory Committee (TAAC), a federal advisory committee established for the purpose of proposing recommendations for accessibility guidelines to be applied to telecommunications manufacturers under Section 255 of the Communications Act, presented its final report containing such

recommendations, to the U.S. Architectural and Transportation Barriers Compliance Board. That report contained a recommendation that the FCC “encourage consumers to express their concerns or grievances about a product to the manufacturer or supplier who [has] brought [a] product to market before complaining to the FCC,” Final Consensus Report §6.7.4.1(a), and that the FCC “encourage manufacturers to respond [to such concerns or grievances] within 30 days.” §6.7.4.1(b). These proposals, which can similarly be applied to common carriers and other service providers, recognize the need to minimize formal complaints, in an effort to resolve grievances quickly and effectively for both consumers and telecommunications companies. However, the TAAC declined to make such informal processes a mandatory prerequisite to the filing of formal complaints because the Committee recognized that there will be instances where a telecommunications company may be unresponsive to a consumer grievance. Consumers on the TAAC were especially concerned about a reluctance on the part of some manufacturers or providers to release information about a particular product or service. In such cases, complainants may have little more than “information and belief” on which to base a formal complaint under Section 255. A refusal by a company to release information in response to an informal grievance would leave consumers with no way of obtaining the factual evidence needed under a stricter standard. For this reason, we agree with Bechtel that complainants under Section 255 should be permitted to file complaints based on “information and belief,” and that abuses of this process should be handled through such means as “summary dismissal of a complaint that has not been filed in good faith or with reasonable justification.” Comments

of Bechtel at 2, citing NPRM ¶¶84-85.

#### IV. The Complaint Procedures Adopted for Section 255 Should not Be Unduly Burdensome for Consumers

The Commission has requested comment on its proposal to require complaint submissions in both hard copy and on computer disks in “read only” mode and formatted in WordPerfect 5.1 for Windows. The NAD submits that these requirements would be unduly restrictive for consumers with disabilities. To begin with, consumers with disabilities, not possessing the resources of large companies, may not have the option of using the very specific WP 5.1 format proposed in the NPRM. Indeed, a good portion of computer users now employ Microsoft WORD for Windows, which does not permit easy conversion to WP 5.1. It is far too burdensome to request such complainants to learn and use a very specific computer format for the purpose of filing complaints. A more realistic alternative would be to permit complainant submissions via electronic mail. Guidelines for such submissions could be incorporated into the final rules and placed on the FCC Website.

In addition, consumers filing formal complaints under Section 255 should be afforded the opportunity to file such complaints through other accessible mediums, such as the Internet and fax machines. In the past, communication barriers frequently have created obstacles to seeking redress on accessibility issues. Again, the insignificant number of complaints filed under existing telecommunications laws related to accessibility matters attest to this fact. The FCC’s current review of its formal complaint processes afford a perfect opportunity to ease some of the burdens which currently exist with respect to the filing of accessibility complaints.

Finally, we urge the Commission to create a formal complaint process for Section 255 that is streamlined, i.e., consumers need to be assured that their complaints will not linger as new products and services continue to be developed at astonishing speeds. We again refer the FCC to our comments to the Section 255 NOI, in which we suggested utilization of an ombudsperson within the Commission, i.e., an individual or department that has special expertise on disability matters, to assist in the rapid resolution of accessibility complaints. In those comments, we also proposed that the FCC create a means of coordinating with the Department of Justice (“DOJ”) to address situations where the appropriate governmental authority for reviewing complaints based on lack of access may result from the failure of a place of public accommodation or state or local governmental entity to follow the requirements of the Americans with Disabilities Act (i.e., the placement of a telephone/TTY), rather than the failure of a telecommunications manufacturer or service provider to comply with Section 255. We noted that in some situations, the assignment of liability may not be clear, and gave as an example the placement of an outlet for a TTY (i.e., is it the responsibility of the place of public accommodation, such as a hotel, or the manufacturer of a payphone that utilizes that outlet?). We again suggest that a mechanism for the coordination, referral, and proper handling of such complaints be in place between the FCC and the DOJ when the jurisdiction of a particular complaint is in question.<sup>1</sup>

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<sup>1</sup> We also noted that similar arrangements already exist among the U.S. Department of Education, the U.S. Department of Health and Human Services, and the U.S. Department of Justice with respect to civil rights complaints that overlap between the ADA and the Rehabilitation Act of 1973.



V. Conclusion

The NAD appreciates the opportunity to submit these reply comments and urges the Commission to coordinate its efforts to devise a final rule on procedures for formal complaints against common carriers with its efforts to develop procedures for formal complaints against other entities covered by Section 255 of the Communications Act.

Respectfully submitted,

A handwritten signature in black ink, reading "Karen Peltz Strauss". The signature is written in a cursive, flowing style.

Karen Peltz Strauss  
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